

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ANTHONY DWAYNE WASHINGTON,

Plaintiff,

File No. 2:09-CV-45

v.

HON. ROBERT HOLMES BELL

JEFFREY WOODS,

Defendant.

_____ /

MEMORANDUM OPINION AND ORDER

Before the Court is a motion for leave to proceed in forma pauperis on appeal filed by Petitioner Anthony Dwayne Washington. (Dkt. No 36.) On November 20, 2009, the Court adopted a Report and Recommendation (R&R) recommending dismissal of Petitioner's habeas petition filed pursuant to 28 U.S.C. § 2254. (Dkt. No. 25, Mem. Op. & Order.) On January 7, 2010, Petitioner filed a notice of appeal. (Dkt. No. 33.)

The R&R recommended denial of a certificate of appealability pursuant to *Slack v. McDaniel*, 529 U.S. 473 (2000). Though the Court's order adopted the R&R generally, it did not expressly deny a certificate of appealability. To clarify the Court's earlier order, the Court adopts the recommendation of the R&R to deny Petitioner a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). To warrant the grant of a certificate, Petitioner must demonstrate a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner's notice of appeal does not specify the specific issues that he wishes

to appeal;¹ however, Petitioner's habeas claims are clearly meritless for the reasons indicated in the R&R and the Court order adopting it. Reasonable jurists could not conclude that the Court's disposition of his claims was debatable or wrong. *See Slack*, 529 U.S. at 484.

With respect to Petitioner's motion for leave to proceed in forma pauperis on appeal, the Court notes that the fee provisions of the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915, do not apply to an appeal from a decision on an application for habeas relief. *Kincade v. Sparkman*, 117 F.3d 949, 951 (6th Cir. 1997). Moreover, it appears that the issue of whether Petitioner's appeal is taken in good faith is not relevant because Petitioner did not proceed in forma pauperis in this action in the district court. *See Fed. R. App. P. 24(a)(3)*. Petitioner's motion, which includes a record of his prison accounts and an affidavit regarding the nature of his appeal, substantially complies with the requirements of Rule 24(a)(1) of the Federal Rules of Appellate Procedure. In light of his indigence, Petitioner may proceed in forma pauperis on appeal without pre-paying or giving security for fees and costs. *Fed. R. App. P. 24(a)(2)*.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion to proceed in forma pauperis (Dkt. No. 36) is **GRANTED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED** with respect to all issues raised in Petitioner's § 2254 petition.

Dated: January 21, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

¹In such cases, the notice is deemed to be a request for review of all issues. *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997).